

Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Southern California Edison Company (U 338 E) for Authority to Lease Available Land on the Center-Del-Amo/Alamitos-Center Right of Way to RHC Communities, LLC.

Application 06-06-012
(Filed June 8, 2006)

**OPINION GRANTING APPROVAL UNDER PUBLIC UTILITIES CODE
SECTION 851 FOR CONVEYANCE OF A LEASE BY SOUTHERN
CALIFORNIA EDISON COMPANY TO RHC COMMUNITIES, LLC****I. Summary**

This decision grants the unopposed application¹ of Southern California Edison Company (SCE) for Commission authorization under Section 851² for SCE to convey a lease of 19.6 acres of its property located on a portion of SCE's Center-Del-Amo/Alamitos-Center transmission right of way (CDA ROW) in Bellflower, California (the City) to RHC Communities, LLC (RHC). This agreement will permit RHC to use 7.2 acres of the site for a self-storage facility and to sublease the remaining acreage to the City for use as parkland. If RHC wishes to utilize the site for other purposes, SCE must file a new application for

¹ The application was filed on June 8, 2006. In Resolution ALJ 176-3174, dated June 15, 2006, we preliminarily categorized this proceeding as ratesetting and preliminarily determined that hearings are unnecessary. No protests to the application were filed.

² All statutory references are to the Public Utilities Code unless otherwise referenced.

approval under Section 851, obtain any additional required local permits, and undergo any additional required environmental review.

II. Background

A. The Parties

SCE is an electric public utility organized under the laws of the State of California, which engages in the business of electric generation, transmission, and distribution. As a public utility, SCE is subject to Commission regulation.

RHC is a real estate investment firm based in Tustin, California. According to the application, RHC has become one of the largest owners and operators of manufactured housing communities in this state. RHC also owns and operates apartment communities.

B. The Project

SCE proposes to lease to RHC 19.6 acres on a portion of SCE's CDA ROW property in Bellflower, California. SCE owns and operates transmission lines that cross the site. The CDA ROW is part of SCE's 220 kilovolt (kV) system.

If the lease is approved, RHC may construct and operate a self-storage facility on the site. RHC also plans to sublease the remainder of the land to the City for use as parkland. RHC has obtained a conditional use permit, a variance, and negative declarations from the City, which approved the proposed use of part of the property for a self-storage facility and the rest of the site as a City park.

The site is currently occupied by three nurseries, F&A Nursery, Andy's Nursery, and Damas Nursery, which together pay a total annual license fee of \$47,085. The three nurseries will vacate the site if RHC exercises its option to enter into the lease.

SCE represents that the proposed lease will not interfere with its operation of its transmission lines and other facilities on the property or with its service to customers.

**C. The Proposed Agreement between
SCE and RHC**

Under the option agreement signed by SCE and RHC on January 5, 2005 (agreement), RHC may exercise its option to lease the site upon Commission approval of this application, so long as RHC has met certain conditions. The agreement includes the proposed lease terms.

The agreement permits RHC to use the property for the construction and operation of a self-storage facility, vehicle and boat storage, and retail facilities, or for any other use permitted by law consistent with SCE's use of the site for its power lines and equipment. However, SCE must give prior consent to RHC's use of the site for any purpose other than self-storage, boat and vehicle storage, or retail facilities. The agreement does not require Commission approval of any change in use of the site.

The initial term of the proposed lease is 65 years. The lease would generate a base rent of \$18,000 in the first year, \$59,000 in the second year, \$132,000 in the third year, and would increase to \$221,000 in the fourth year. The base rent will also be adjusted annually based on a percentage equal to the percentage change in the Consumer Price Index for the Los Angeles-Long Beach-Riverside area, not to exceed a 3% increase. The base rent cannot be reduced based on a decrease in the Consumer Price Index to an amount lower than the base rent for the immediately preceding year. If RHC uses the site for any purpose other than a self-storage facility, boat and vehicle storage, or retail

facilities, SCE may adjust the base rent to reflect the fair market value of the site for such use.

RHC must also pay SCE 20% of its gross revenues derived from use of the property during the preceding year as additional rent. If RHC subleases the site, SCE may increase the rent to reflect the current fair market value of the property.

SCE is responsible for all real property taxes assessed against the site by the State Board of Equalization. RHC has agreed to pay all personal property taxes, general and special assessments, and other charges levied or assessed against the site, RHC's improvements on the site, or RHC's personal property. However, RHC is not responsible for payment of any taxes assessed against SCE's equipment or improvements on the site.

RHC acknowledges that SCE has the power of eminent domain and may at any time condemn the property if it is needed for utility purposes.

Under the agreement, RHC must use the property in a manner that does not interfere with SCE's use of its power lines and equipment and that complies with legal and regulatory requirements. SCE has reserved the right to enter the property as necessary to inspect the property, to maintain and clean its electrical facilities, or to protect the electrical facilities in an emergency.

SCE has also reserved the right to license portions of the property to third parties for cell sites and the placement of billboards.

Under the agreement, SCE must approve the plans and specifications for any improvements that RHC wishes to construct on the site. RHC shall own any improvements that it constructs on the property during the lease term.

RHC must maintain the property and improvements in good condition and use the property safely.

RHC may not utilize the area directly under SCE's towers without SCE's written consent. The agreement requires RHC to maintain clearances of at least 18 feet between equipment it uses on the site and SCE's overhead electrical conductors that are less than 500 kV and at least 29 feet from all 500 kV overhead electrical conductors. Unless SCE agrees otherwise in writing, RHC must also maintain clearances of at least 50 feet from all tower legs and 10 feet from all steel poles, wood poles, and anchors on the site. SCE may require RHC to construct and maintain access roads that are at least 16 feet wide and are capable of supporting a gross load of 40 tons on a three-axle vehicle.

RHC also may not use, permit, create, store or allow hazardous substances on the property. Under the agreement, RHC is responsible for the entire cost of removal of any hazardous substances placed on the site during the lease term, but not for any hazardous materials placed on the site before the lease term.

SCE represents in the agreement that except as otherwise disclosed to RHC, SCE does not know, or have reasonable cause to believe, that any release of hazardous substances exists on or beneath the site. Under the agreement, RHC has the right to inspect the property, review relevant SCE documents, and analyze the soil and ground water to determine if hazardous materials exist on the site before exercising its option to lease. If RHC enters into the lease, RHC is deemed to have determined that the property will safely support the type of improvements that RHC wishes to construct and is fit for these types of uses, and to have accepted all associated risks.

RHC may not use or store gasoline or petroleum products (except for fuel stored in the tank of an operable vehicle) or flammable materials on the property.

In the agreement, RHC acknowledges that any structures it constructs on the property will be in close proximity to one or more high voltage (66 kilowatt or higher) electric transmission lines or substation facilities. RHC's structures may therefore be susceptible to induced voltages, static voltages or related electric fault conditions (induced voltages) that create a health and safety risk, unless appropriate grounding or other mitigation measures are incorporated into the structures. RHC has agreed to assume responsibility for identifying and implementing appropriate mitigation measures to reduce this risk at its own expense.

In addition, RHC shall indemnify and defend SCE from any claims or liability connected with or arising from any cause in, on or about the site, except for claims which are caused by SCE's negligence or willful misconduct or which arise from SCE's entry onto the property in connection with the use and operation of SCE facilities. RHC has also specifically agreed to indemnify and defend SCE from any claims arising from or connected to induced voltages on the site. In order to further protect SCE from liability, RHC is required to provide SCE with evidence of adequate insurance coverage before executing the agreement or entering the property.

By entering into the lease and occupying the site, RHC is deemed to have acknowledged that the site is in good and leasable condition and to have accepted the property on an "as is" basis.

The agreement would permit RHC to assign, transfer, sublease or mortgage the lease, without the prior consent of the Commission, but with SCE's approval.

Any disputes between the parties that cannot be resolved through good faith negotiations will be subject to arbitration.

D. Environmental Review

The California Environmental Quality Act (CEQA)³ applies to discretionary projects to be carried out or approved by public agencies. A basic purpose of CEQA is to “inform governmental decision-makers and the public about the potential, significant environmental effects of the proposed activities.”⁴ Since the Commission must act on SCE’s Section 851 application and issue a discretionary decision without which the project cannot proceed, the Commission must act as either a Lead Agency or Responsible Agency under CEQA.

The City is the Lead Agency for CEQA review of the project. This review includes Conditional Use Permit No. CU 05-14 authorizing the construction and operation of a self-storage facility on 7.2 acres of the site and use of the remainder of the site as a City park. The review also includes Variance Case No. V 05-04, authorizing deviations from the City Zoning Code for the following development standards: (1) street frontage on a major arterial street, (2) exceeding the maximum allowable building height for the office building associated with the self-storage facility, and (3) eliminating the on-site manager’s quarters for the self-storage facility and the associated two parking spaces.⁵

³ Public Resources Code Section 21000, *et seq.*

⁴ Title 14 of the California Code of Regulations (hereafter, CEQA Guidelines), Section 15002.

⁵ The City deleted the on-site manager’s quarters and associated parking spaces for the self-storage facility from the project because of the proximity of transmission towers and high voltage transmission lines on the site.

The Commission is a Responsible Agency for the project. CEQA requires the Commission to consider the Lead Agency's environmental documents and findings before acting upon or approving the project.⁶

SCE's application includes the following environmental documents prepared and adopted by the Lead Agency for the review of Conditional Use Permit No. CU 05-14 and Variance Case No. V 05-04:

- Letter to Mark Raber of Pacific Storage Partners from the City dated September 23, 2005;
- Notice of Intent to Adopt a Negative Declaration dated October 20, 2005;
- City Planning Department Staff Report dated November 21, 2005;
- City Resolutions Nos. PC 05-44, PC 05-45, and PC 05-48 dated November 21, 2005, which approved the following, respectively:
 - (i) Conditional Use Permit Case No. CU 05-14 allowing a self-service storage facility on property on the site,
 - (ii) Variance Case No. V 05-04 requesting the following code deviations: (a) street frontage on a major arterial street, (b) structures exceeding the maximum allowable building height, and (c) eliminating the on-site manager's quarters and required 2-covered parking spaces for it on the site,
 - (iii) Negative Declaration No. 05-10 prepared for Conditional Use Permit Case No. CU 05-14 and Variance Case No. V 05-04, to analyze the environmental impacts of the project.

⁶ CEQA Guidelines Section 15050(b). The specific activities that must be conducted by a Responsible Agency are contained in CEQA Guidelines Section 15096.

- California Department of Fish and Game Certificate of Fee Exemption dated November 23, 2005.
- Notice of Determination dated November 23, 2005.

We also take official notice of the following documents prepared by the Lead Agency in its review of the use of part of the site as a park, to be known as the Bellflower River View Park:

- Notice of Intent to Adopt a Negative Declaration and Public Meeting, dated October 27, 2005;
- Notice of Determination for Negative Declaration adopted for Bellflower River View Park, dated December 2, 2005;
- California Fish and Game Certificate of Fee Exemption dated December 2, 2005.

In reviewing the environmental effects of granting Conditional Use Permit No. CU 05-14 and Variance Case No. V 05-04, the City's Negative Declaration concluded that the project had no significant environmental impacts and that no mitigation measures are required. The City's negative declaration for the Bellflower River View Park also concluded that the use of part of the site as parkland would have no significant environmental impacts and that no mitigation measures are required.

The City filed a Notice of Determination, which stated that the City had adopted a negative declaration for Conditional Use Permit No. 05-14 and Variance Case No. V 05-04, with the Los Angeles County Clerk on November 23, 2005. The City filed an additional Notice of Determination, which stated that the City had adopted a negative declaration for the River View Park Project, with the Los Angeles County Clerk on December 2, 2005.

We have reviewed the City's environmental documents and find them adequate for our decision-making purposes. We also find that the City

reasonably concluded that the project would not have a significant negative effect on the environment and that no mitigation measures are required. Accordingly, we adopt the City's environmental documents and conclusions for purposes of our approval of the project.

E. Ratemaking Considerations

SCE proposes to treat revenue from the proposed lease as other operating revenue (OOR). This treatment of lease revenues easement is unopposed.

On January 30, 1998, SCE filed Advice Letter 1286-E, which sets forth categories of non-tariffed products and services offered for sale by SCE and describes the products and services within each category. This advice filing was made pursuant to Rule VII.F of the Affiliate Transaction Rules contained in Appendix A of Decision (D.) 97-12-088. Attachment B to Advice Letter 1286-E identified the *Secondary Use of Transmission Right of Ways and Land* and the *Secondary Use of Distribution Right of Ways, Land, Facilities and Substations* as categories of existing non-tariffed products and services.

In D.99-09-070, the Commission adopted a gross revenue sharing mechanism for certain of SCE's other operating revenues. The adopted gross revenue sharing mechanism applies to OOR, except for revenues that: (1) derive from tariffs, fees or charges established by the Commission or Federal Energy Regulatory Commission, (2) are subject to other established ratemaking procedures or mechanisms, or (3) are subject to the Demand-Side Management Balancing Account. Under the gross revenue sharing mechanism, all applicable gross revenues recorded from non-tariffed products and services subject to the mechanism will be split between shareholders and ratepayers after the Commission-adopted annual threshold level of OOR has been set. For those

non-tariffed products and services deemed “active” by the Commission, revenues in excess of the annual threshold will be split between shareholders and ratepayers on a 90%/10% basis. For those non-tariffed products and services deemed “passive” by the Commission, the revenues in excess of the annual threshold will be split between shareholders and ratepayers on a 70%/30% basis.⁷

SCE products or services offered under the *Secondary Use of Transmission Right of Ways and Land* and the *Secondary Use of Distribution Right of Ways, Land, Facilities and Substations* have been deemed “passive” for revenue sharing purposes. Therefore, here, the proposed lease with RHC would be treated as “passive,” so that any lease revenues which exceed the annual threshold would be allocated between shareholders and ratepayers on a 70%/30% basis.

⁷ Under the settlement approved in D.99-09-070, an existing product or service is classified as “active” if it involves a total incremental shareholder investment of \$225,000 or more, either on a one-time basis or within a 12-month period. An existing product or service is classified as “passive” if it involves a total incremental shareholder investment of less than \$225,000. “Incremental shareholder investment” includes capital-related costs and expenses. Capital-related costs, labor and other expenses properly charged to the utility shall not be included in calculating the \$225,000 threshold.

Each new category of products or services is presumed to be “passive.” To reclassify an existing product or service as “active,” or a new product or service as “active,” SCE must file an advice letter which shows that the product or service involves incremental shareholder investment of at least \$225,000 either on a one-time basis or within a 12-month period. SCE may file only up to four advice letters per year for this purpose. If no protests to the advice letter are filed, the change in classification becomes effective on the 31st day after the filing of the advice letter.

III. Discussion

Section 851 provides that no public utility shall sell, lease, mortgage, or otherwise encumber the whole or any part of property necessary or useful in the performance of its duties to the public, without first having obtained Commission approval.⁸

The primary question for the Commission in Section 851 proceedings is whether the proposed transaction is in the public interest. The public interest is served when utility property is used for other productive purposes without interfering with the utility's operation or affecting service to utility customers.⁹ In reviewing a Section 851 application, the Commission may "take such action, as a condition to the transfer, as the public interest may require."¹⁰

We find that SCE's proposed lease with RHC is in the public interest. SCE's entry into the lease with RHC will generate substantial OOR for the benefit of ratepayers and will permit the productive use of the site, without interfering with SCE's existing transmission and substation facilities. The sublease of part of the site to the City will also make additional parkland available for enjoyment by the public. The terms of the agreement between SCE and RHC are reasonable

⁸ Section 851 states in pertinent part:

No public utility...shall sell, lease, assign, mortgage, or otherwise dispose of or encumber the whole or any part of its ...property necessary or useful in the performance of its duties to the public...without first having either secured an order from the commission authorizing it to do so for qualified transactions valued above five million dollars (\$5,000,000) or for qualified transactions valued at five million dollars (\$5,000,000 or less, filed an advice letter and obtained a resolution from the commission authorizing it do to so. ...

⁹ D.00-07-010 at p. 6.

¹⁰ D.3320, 10 CRRC 56, 63.

and do not subject SCE to an undue risk of liability that could affect SCE's ability to provide utility service to the public. The proposed lease will not interfere with SCE's use of the property or with service to SCE customers, and the property will be utilized safely and in a manner consistent with legal and regulatory requirements.

We are concerned that the agreement would permit RHC to assign, transfer, sublease or mortgage the lease, without prior Commission approval. However, the agreement does require RHC to notify SCE in advance before taking any of these actions. We will therefore address these concerns by requiring SCE to apply for Commission authorization pursuant to Section 851 for any proposed assignment, transfer, sublease or mortgage of the lease by RHC that would alter the terms of the existing agreement.

We also note that in addition to use of the site for a self-storage facility and a park, the proposed lease would permit RHC to utilize the property for vehicle and boat storage or retail facilities or, with SCE's approval, for any other use permitted by law that would not interfere with SCE's facilities, without prior Commission approval of the change in use. However, the conditional use permit granted to RHC by the City only authorizes use of part of the property for a self-storage facility and the remainder of the site as parkland, and the environmental analysis conducted by the City and the Commission addressed only the proposed use of the site for these purposes.

Therefore, in order to comply with CEQA and Section 851, if RHC wishes to utilize the property for any use other than the self-storage facility and the sublease of the remaining property to the City for parkland as authorized by the City in Conditional Use Permit No. CU 05-14 and Variance No. V 05-04, SCE must first apply for authorization pursuant to Section 851 and undergo any

additional required environmental review. RHC must also obtain any necessary local approvals required for use of the property other than as the site for a self-storage facility and a sublease of the remainder of the site to the City for parkland.

We approve of the proposed ratemaking treatment for the compensation that RHC will pay to SCE under the lease. The treatment of this compensation as OOR and of the lease as a “passive” source of revenue for the purposes of allocation between shareholders and ratepayers is consistent with prior Commission decisions and our current policy.

IV. Conclusion

For all of the foregoing reasons, we grant the application of SCE pursuant to Section 851, subject to the ordering paragraphs which follow, effective immediately.

V. Waiver of Comment Period

This is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to Section 311(g)(2) of the Public Utilities Code and Rule 14.6(c)(2) of the Commission’s Rules of Practice and Procedure, the otherwise applicable 30-day period for public review and comment is waived.

VI. Final Categorization

Based on our review of this application, we conclude that there is no need to alter the preliminary determinations made in Resolution ALJ 176-3174 (June 15, 2006) to categorize this proceeding as ratesetting, and that there is no need for a hearing.

VII. Assignment of Proceeding

Geoffrey F. Brown is the Assigned Commissioner and Myra J. Prestidge is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. The proposed 65-year lease/option agreement will not interfere with SCE's use of the property or its facilities or with service to SCE customers, and the property will be utilized safely and in a manner consistent with Commission and legal requirements.

2. The City of Bellflower is the Lead Agency for RHC's proposed project under CEQA.

3. On November 21, 2005, the City Council adopted Resolution No. PC 05-44, which approved Conditional Use Permit Case No. CU 05-14, authorizing the construction and operation of a self-service storage facility on 7.2 acres of the site and use of the remainder of the site as parkland, and Resolution No. PC-05-45, which approved Variance Case No. V 05-04, exempting the self-storage facility to be constructed on the site from certain City zoning requirements.

4. Also on November 21, 2005, the City Council adopted Resolution No. PC 05-48, which adopted a negative declaration for Conditional Use Permit Case No. CU 05-14 and Variance Case No. V 05-04.

5. The City's negative declaration found that granting Conditional Use Permit Case No. CU 05-14 and Variance Case No. V 05-04 would have no significant adverse environmental impacts and that no mitigation measures are required.

6. On November 23, 2005, the City filed a Notice of Determination, which states that the City had adopted a negative declaration for Conditional Use Permit Case No. 05-14 and Variance Case No. V 05-04, with the Los Angeles County Clerk.

7. On November 28, 2005, the City approved a negative declaration for use of part of the site as a City park, to be known as the Bellflower River View Park.

8. The City's negative declaration for the Bellflower River View Park project found that use of part of the site for the park would have no significant adverse environmental effects and that no mitigation measures are required.

9. On December 2, 2005, the City filed a Notice of Determination, which states that the City had adopted a negative declaration for the Bellflower River View Park project, with the Los Angeles County Clerk.

10. The City's CEQA review did not address uses of the site for vehicle or boat storage, retail facilities, or uses other than a self-storage facility and a City park.

11. The Commission is a Responsible Agency for the purposes of environmental review of the proposed lease under CEQA.

12. Rent received by SCE from RHC under the lease will be treated as OOR from a "passive" revenue source and will be allocated among shareholders and ratepayers on a 70%/30% basis pursuant to D.99-09-070.

13. The proposed lease will generate substantial lease revenues for the benefit of SCE ratepayers.

14. The proposed lease will allow productive use of the site without interfering with SCE's existing use of the property for its transmission and substation facilities.

15. RHC's sublease of part of the site to the City will make additional parkland available for enjoyment by the public.

Conclusions of Law

1. The Commission has reviewed the City's environmental documents and finds them adequate for our decision-making purposes under CEQA.

2. The Commission finds that the City reasonably concluded that RHC's construction and operation of a self-storage facility on 7.2 acres of the site and

sublease of the rest of the site to City for use as a park, will not have significant adverse effects on the environment and that no mitigation measures are required.

3. Consistent with Section 851, SCE's conveyance of the lease to RHC will serve the public interest and should be approved.

O R D E R

IT IS ORDERED that:

1. Southern California Edison Company (SCE) is authorized pursuant to Public Utilities Code Section 851 (Section 851) to convey a lease across 19.6 acres on its Center-Del-Amo/ Alamitos-Center Right of Way property located in the City of Bellflower, California (the City) to RHC Communities, LLC (RHC) as described in this decision.

2. SCE shall file an advice letter that contains a legal description of the property leased to RHC pursuant to this order with the Commission Energy Division within 60 days.

3. SCE shall treat compensation received from RHC under the lease as other operating revenue received from a "passive" revenue source pursuant to Decision 99-09-070 and shall allocate this revenue between shareholders and ratepayers on a 70%/30% basis, unless directed otherwise in a future Commission order.

4. SCE shall amend its option agreement and any subsequent lease with RHC to require advance Commission approval of any proposed assignment, transfer, sublease, or mortgage of the lease that would alter the lease terms or change the use of the property to other than as a self-storage facility on 7.2 acres of the site and the sublease of the remainder of the site to the City for use as parkland.

5. If RHC wishes to utilize the property for any purposes other than the uses analyzed in the environmental documents prepared by the City and relied upon by the Commission in this decision, SCE shall first apply for Commission authorization pursuant to Section 851, undergo any required environmental review, and apply for any required local approvals. SCE shall amend its option agreement and any subsequent lease with RHC to include this requirement.

6. Application 06-06-012 is closed.

This order is effective today.

Dated _____, at San Francisco, California.